



"In Pursuit of Excellence"

LEWIS-PALMER SCHOOL DISTRICT 38

146 Jefferson Street, P.O. Box 40
Monument, CO 80132-0040

Administration Office:
Phone 719-488-4700
Fax 719-488-5951
www.lewispalmer.org

December 1, 2010

REQUEST FOR REVIEW

VIA ELECTRONIC DELIVERY

Docket Number: 02-6

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

APPEAL OF UNIVERSAL SERVICE ADMINISTRATIVE COMPANY DECISIONS

October 6, 2010 Funding Commitment Decision Letters

October 20, 2010 Notification of Commitment Adjustment Letters

Billed Entity: Lewis-Palmer School District 38 **Billed Entity Number:** 142146

Contact: Cheryl Wangeman, Assistant Superintendent of Operations
Lewis-Palmer School District 38
146 Jefferson Street
P.O. Box 40
Monument, CO 80132
Telephone: (719) 488-4705
Fax: (719) 488-4704
CWangeman@lewispalmer.org

CHART OF USAC DENIALS AND RESCISSIONS

Date of Letter from USAC	Funding Year	471 Number	FRN	Amount Denied	Amount to be Recovered
October 6, 2010	2010-2011	733603	2002019	\$66,088.39	
October 6, 2010	2010-2011	733603	2002100	\$64,535.84	
October 6, 2010	2009-2010	674533	1842164	\$66,088.39	
October 6, 2010	2009-2010	674533	1842240	\$70,338.63	
October 6, 2010	2009-2010	674533	1842298	\$10,843.68	
October 20, 2010	2008-2009	622216	1717134		\$66,065.71
October 20, 2010	2008-2009	622216	1717255		\$67,227.36
October 20, 2010	2008-2009	622216	1719143		\$8,442.72
October 20, 2010	2006-2007	507363	1395333		\$36,000.00
October 20, 2010	2006-2007	507363	1395122		\$3,600.00
October 20, 2010	2005-2006	441721	1221236		\$36,000.00
Totals:				\$277,894.93	\$217,335.79
Grand Total:				\$495,230.72	

The Lewis-Palmer School District 38 (the "District") is requesting review and reconsideration of USAC's decision to deny and recover funds based upon its conclusion that the District did not run a fair and open competitive bidding process and, alternatively, the District seeks a waiver of the newly adopted rules, should they apply, with respect to the receipt of gifts. The District respectfully requests that the FCC review the facts and circumstances surrounding USAC's decision to deny and recover funds which was based upon gifts received from the District's current service provider, Trillion Partners, Inc. ("Trillion").

The District fully complied with applicable local and state laws with respect to gifts and is requesting the FCC to take into account considerations of hardship, equity, and the more effective implementation of overall policy when it considers the circumstances at issue in this matter. To the extent that the Commission finds that there was a general rule that was not technically met, the District believes special circumstances and the public interest warrant a deviation from that rule in its particular case. There is no evidence of, nor has there been even any allegation of, waste, fraud or abuse, misuse of funds, or any failure to adhere to core program requirements.

For the reasons discussed below, the Lewis-Palmer School District 38 (the "District"), with the assistance of its legal counsel, respectfully requests that the FCC reverse the USAC's denial and rescission of the above-referenced funding applications and commitments.

SUMMARY OF ISSUE

On October 6, 2010, USAC issued denials for the above-referenced Form 471 applications and funding requests from funding years 2009-2010 and 2010-2011.¹ The District has also received rescission letters for the 2008-2009, 2006-2007, and 2005-2006 funding years.²

The amount of funding commitment that USAC has now denied is \$277,894.93 and the amount that USAC proposes to recover is \$217,335.79. Accordingly, the total funding denied or rescinded by USAC is \$495,230.72. As described below, USAC's denials and rescissions are unjustified.

In its denials of the funding year 2009-2010 and 2010-2011 funding requests USAC stated:

This FRN is denied because the documents provided by you and/or your vendor indicates [sic] that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, [sic] entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied.³

USAC's rescission letters similarly stated:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, documentation provided by you and/or your vendor indicated that there was not a fair and open competitive bid process free from conflicts of interest. The documents provided by you and/or your service provider indicate that, prior to/throughout your contractual relationship with the services provider listed on the FRN, you were offered and accepted gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and service provider.⁴

The denial and rescission materials do not provide any specific facts or legal basis as sufficient grounds for its action. Over one year before receiving the denials, in July 2009, the

¹ October 6, 2010 Funding Commitment Decision Letters from USAC, attached hereto as Exhibit 1.

² October 20, 2010 Notification of Commitment Adjustment Letters, attached hereto as Exhibit 2. As of the time of filing this Request for Review, no Commitment Adjustment Letters have been received nor has funding been rescinded for funding year 2007.

³ Ex. 1 at pp. 6, 7, and 29-31.

⁴ Ex. 2 at pp. 4-6, 10, 14, and 18.

District received and responded to a notice from USAC regarding its relationship with Trillion. About a year later, it received a letter, dated June 4, 2010, in which Pina Portanova from the Schools and Libraries Division of USAC made accusations relating to the receipt of “gifts” from Trillion by District employees. She described in her letter that she believed that those gifts “compromised” the competitive bidding process.⁵ The District’s response to that letter is attached hereto as Exhibit 4.

Given the lack of specifics contained in the denials and rescissions themselves, the District assumes that the USAC actions were based on the issues raised in Ms. Portanova’s letter. Accordingly, this appeal references that letter and addresses the accusations contained therein. It assumes that the allegations in Ms. Portanova’s letter are the bases for denying all the FRNs. This appeal also responds to the general accusation contained in the Funding Commitment Decision Letters and Funding Commitment Adjustment Reports that the District did not conduct a competitive bidding process.

TIMELINE OF EVENTS AND SUMMARY OF EVIDENCE

USAC apparently obtained one spreadsheet from Trillion containing information regarding “Total \$ to Customer,” which was presented to the District as an attachment to Ms. Portanova’s June 4, 2010 letter. Exhibit 3 at page 3. This spreadsheet summarizes certain of Trillion’s costs from 2006. The District has no supporting documents from USAC or Trillion to validate the spreadsheets, but believes that they do not justify USAC’s action, even assuming the numbers are correct.

According to the spreadsheet, between January 15, 2006 and December 18, 2006, Steve Endicott, the District’s Director of Information Systems, attended conferences/workshops, and employees of the District received *de minimis* gifts from Trillion. As outlined below, all gifts that were received by employees of the District during this time met the rules and requirements then promulgated by USAC and the FCC. The conferences/workshops were in the context of an existing business relationship. Moreover, there was no guidance from USAC or any other source that the District employee’s attendance at workshops and conferences would “compromise” the competitive bidding process. In addition, attendance at the workshops and conferences met the Colorado local and state standards.

THE COMMISSION’S REGULATIONS PROMULGATED ON SEPTEMBER 28, 2010 ARE NOT RETROACTIVE

On September 28, 2010, the FCC issued its Sixth Report and Order, for the first time codifying standards related to E-rate applicants receiving gifts. As described below, even if the new regulations applied to a bidding process that took place many years ago, the District generally would not have been in violation of them. Nevertheless, it is important to note that the Commission may not apply its new regulations to bidding processes that occurred before those

⁵ Ms. Portanova’s letter is attached hereto as Exhibit 3.

regulations were promulgated.⁶ The Commission's Sixth Report and Order provides, "Accordingly, we amend section 54.503 of our rules to prohibit E-rate applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the E-rate program."⁷ The use of the words "amend" and "prohibit" recognizes the prospective applicability of the new regulations rather than the intent for them to apply retroactively or simply "clarify" existing rules.⁸

A strong presumption exists against retroactive application of regulations.⁹ Accordingly, substantive administrative rules and regulations like those promulgated recently by the Commission apply only to conduct that occurs after their effective date.¹⁰ A congressional grant of rule-making authority will never be understood to encompass the power to promulgate retroactive regulations unless that power is expressly conveyed by Congress.¹¹ Here, Congress did not, in any way, grant the Commission the power to promulgate retroactive regulations relating to the competitive bidding process.

Accordingly, although the District did not generally violate even the new requirements, it was required to meet only the previous opaque guidelines for gifts. Those guidelines were confined only to a since-revised USAC PowerPoint presentation that provided in the relevant part, "Know and follow your state and local rules regarding acceptance of gifts."¹² In fact, the District abided by all local and state rules regarding the acceptance of gifts, and there has been no allegation by USAC of any violation of such rules.

THE DISTRICT CONDUCTED A FAIR AND OPEN COMPETITIVE BIDDING PROCESS

The District's board approved Trillion as a provider only after the promulgation of comprehensive RFPs and after reviewing proposals from numerous different providers. Trillion's proposals were the least expensive to the District. As described below, the conferences/workshops and *de minimis* gifts in the context of the District's ongoing relationship with Trillion did not compromise the competitive bidding process.

⁶ *Sweet v. Sheahan*, 235 F.3d 80 (2d Cir. 2000); *Hawknet, Ltd. v. Overseas Shipping Agencies*, 590 F.3d 87 (2d Cir. 2009); *Moses v. Providence Hosp. and Medical Centers, Inc.*, 561 F.3d 573 (6th Cir. 2009).

⁷ FCC Sixth Report and Order, FCC 10-175 para. 88 [hereinafter Sixth Report and Order]. It is important to note that this Report and Order does not cite to any authority in existence prior to its issuance that prohibited the receipt of *de minimis* gifts.

⁸ *Hicks v. Federal Bureau of Prisons*, 603 F.Supp.2d 835 (2009). Also noteworthy is the fact that the citations contained in footnote 243 of the Sixth Report and Order have nothing to do with gifts.

⁹ *Sweet*, 235 F.3d 80; *Hawknet, Ltd. v. Overseas Shipping Agencies*, 590 F.3d 87 (2d Cir. 2009); *Moses v. Providence Hosp. and Medical Centers, Inc.*, 561 F.3d 573 (6th Cir. 2009).

¹⁰ *Dolese Bros. v. State ex rel. Oklahoma Tax Com'n*, 2003 OK 4, 64 P.3d 1093 (Okla. 2003).

¹¹ *Durable Mfg. Co. v. U.S. Dept. of Labor*, 578 F.3d 497 (7th Cir. 2009); *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 109 S. Ct. 468, 102 L. Ed. 2d 493 (1988); *Rock of Ages Corp. v. Secretary of Labor*, 170 F.3d 148 (2d Cir. 1999); *Orr v. Hawk*, 156 F.3d 651, 1998 FED App. 0281P (6th Cir. 1998); *University of Iowa Hospitals and Clinics v. Shalala*, 180 F.3d 943, 136 Ed. Law Rep. 186 (8th Cir. 1999).

¹² This phrase still appears in the PowerPoint presentation, Issues in Competitive Bidding, located at: <http://www.usac.org/res/documents/sl/ppt/2009-training/2009%20Issues%20in%20Competitive%20Bidding.ppt>, a copy of which has been attached hereto as Exhibit 5.

Existing Business Relationship

Initially, when addressing the alleged improper gifts, it is important to draw two distinctions. First, there is a difference between (a) “gifts,” and (b) payment for expenses pursuant to an existing contractual relationship. Second, there is a difference between (a) expenditures made relating to a future possible customer, and (b) expenditures made in the maintenance and support of an existing customer. The District had an ongoing, existing contractual relationship with Trillion for many years prior to any competitive bidding process at issue in this appeal. In reference to these important distinctions, therefore, the expenditures by Trillion were made in maintenance and support of the District as an existing customer, and were payments for expenses pursuant to an existing contractual relationship.

Of the \$1,407.51 described in the Expense Summary provided by Trillion, only two \$25 gift cards are properly classified as gifts. These gifts were sent on December 18, 2006, just one week before Christmas. It is apparent that Trillion sent these *de minimis* gifts to multiple customers during the holiday season. These small gifts had nothing to do with the extensive public request for proposal process (RFP) conducted by the District. Even if the new regulations applied to these gifts, which the District maintains is not the case, the individual gifts would exceed the \$20 per gift minimum by only \$5, and the gifts would not exceed the annual limit of \$50. Importantly, the District included the gift cards as door prizes at the staff Christmas party. The individuals who received the gifts did not even know that they came from Trillion and these individuals certainly had nothing at all to do with the E-rate competitive bidding process. In addition, as described below, Steve Endicott’s receipt of a \$45 ski pass over eight months earlier had no impact on the competitive bidding process. The skiing was in conjunction with a retreat to build Mr. Endicott’s familiarity with Trillion’s products and people, with whom he was required to work with on a weekly basis as a then-existing customer. The short recreational activity was designed to improve the existing contractual relationship with Trillion by allowing the parties to get to know one another outside their offices. Such activity is typical, and in fact encouraged, in business relationships like the one that the District had with Trillion in 2006. In addition, even if this \$45 is deemed a gift, it was well within the rules and requirements then in place. It would not exceed the annual limit under the current regulations. Mr. Endicott was the District’s Director of Information Systems at the time, but was not the person ultimately responsible for oversight of the competitive bidding process nor for the award of contract. Dr. Raymond Blanch, Executive Director, Assessment, Research & Technology at the time, was the person responsible for making the recommendation to the Board of Education and he did not receive any gifts.

The remaining expenditures listed on the Summary were also in the context of an existing contractual relationship with Trillion. As indicated above, the District has had contracts with Trillion since February 4, 2003 to provide internet-related support and services. Mr. Endicott’s travel and expenses during 2006 related directly to these existing contracts. For example, in January and February 2006, Mr. Endicott attended and spoke at the conference of a non-profit organization committed to the dissemination of educational technology information. Through this conference he was able to share his experiences with other educators, and gain from their diverse perspectives. The Visionaries in Technology Education Counsel (“VTEC”) Conference

that Mr. Endicott attended in July 2006 was a conference for users of technology sold by many providers, including Trillion. Like the other expenditures, this conference related directly to the ongoing contractual relationship that the District had with Trillion. Moreover, by attending conferences and workshops like those listed, Mr. Endicott was able to work in a more self-sufficient manner with less support from Trillion. Trillion thus saved money by investing in the training of those employees that would be responsible for the day-to-day maintenance of its systems.

No Conflict of Interest

The receipt of occasional, nonpecuniary gifts of insignificant value from a current provider did not create a *per se* conflict of interest. At the time of the gifts, there was no guidance from the FCC or USAC with respect to what type of gifts would compromise the competitive bidding process. In fact, USAC had a PowerPoint presentation on its website that provided, “know and follow your state and local rules regarding acceptance of gifts.”¹³ This statement specifically contemplated that gifts may be received under certain conditions, so long as the state and local rules were followed. Moreover, the certifications contained on Forms 470 and 471 were not violated. In particular, the District did not violate the certification, “Additionally, I certify that the entity or entities listed on this application have not received anything of value or promise of anything of value, other than the services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.” Nowhere is or was “anything of value” defined. However, this term could not possibly include *de minimis* gifts or else it would conflict with even the new regulations. Further, as noted above, the available guidance regarding the receipt of *de minimis* gifts provided only that state and local rules should be followed.

The District understands that compliance with state and local rules in the receipt of gifts is not dispositive, but as further indication of its commitment to ethical standards and conduct in all matters, including the competitive bidding process, it would like to point out that the following are not considered gifts of substantial value, and thus can be accepted by a local government employee under Colorado law: “an occasional nonpecuniary gift, insignificant in value;” “reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which the . . . employee is scheduled to participate;” “acceptance of an opportunity to participate in a . . . meeting which is offered to such . . . employee which is not extraordinary when viewed in light of the position held by such . . . employee;” and “items of perishable or nonpermanent value, including, but not limited to, meals, lodging, [and] travel expenses.”¹⁴ All of the expenditures met these guidelines.

Moreover, the competitive bidding process complied with all terms and conditions associated with a *bona fide* competitive bidding process. First, 47 C.F.R. § 54.504 provided, “an eligible school, library, or consortium that includes an eligible school or library shall seek

¹³ Ex. 5 at p. 18.

¹⁴ COLO. REV. STAT. §§ 24-18-104(1)(b) and (3)(b)-(f).

competitive bids, pursuant to the requirements established in this subpart.”¹⁵ Accordingly, the District filed Form 470, put out an RFP, and timely filed Form 471. It complied with all of the terms and conditions associated with a competitive bidding process, and certified twice under oath, “All bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals.”¹⁶ Note that there was no provision in the regulations prohibiting the receipt of *de minimis* gifts or any gifts at all for that matter.

Second, “[a] fundamental requirement of the E-rate program is that solicitation for services be based on a fair and open competitive bidding process that is free from conflicts of interest.”¹⁷ Accordingly, USAC’s website provides, “‘Fair’ means that all bidders are treated the same and that no bidder has advance knowledge of the project information. ‘Open’ means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them.”¹⁸ “[T]he applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with ‘inside’ information or allow it to unfairly compete in any way. For example, a conflict of interest exists when the applicant’s consultant is associated with a service provider that is selected and is involved in determining the services sought by the applicant and the selection of the applicant’s service provider(s).”¹⁹

Trillion did not have advance knowledge of the project information, and all bidders were treated the same. Accordingly, the competitive bidding process was “fair.” There were no secrets in the process, and all bidders knew what was required of them; all requirements were listed on the Form 470. Accordingly, the competitive bidding process was “open.” The District’s relationship with Trillion was, and remains, a professional contractual relationship. It is not the type of relationship that would allow Trillion to unfairly compete in any way. Trillion was not at all involved in determining the services the District sought or in the selection of its providers.

Mr. Endicott did not and does not have any affiliation with any of the District’s providers. The requirements on the District’s Forms 470 and in its RFPs were not at all adjusted to meet Trillion’s needs, and Trillion played absolutely no role whatsoever in the development of those requirements. The parties remained at arm’s length throughout the competitive bidding process. “As the Commission found in the *Aberdeen School District Order*, the goal of the competitive bidding process is to ensure that E-rate funding is not wasted because an applicant

¹⁵ 47 C.F.R. § 54.504(a).

¹⁶ 47 C.F.R. § 54.504(b)(2)(vii), (b)(3)(xi); *see also* 47 C.F.R. § 54.511(a).

¹⁷ *Request for Review of a Decision of the Universal Service Administrator by Lazo Technologies, Inc., et al.*, File Nos. SLD-360412, *et al.*, CC Docket No. 02-6, para. 5.

¹⁸ <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>. A copy of USAC’s webpage Information, Step 3: “Open a Competitive Bidding Process” is attached hereto as Exhibit 6 at page 3.

¹⁹ *Id.*

agrees to pay a higher price than is otherwise commercially available.”²⁰ The District’s competitive bidding process ensured that E-rate funding would not be wasted.

THE DISTRICT PARTICIPATED IN A BONA FIDE COMPETITIVE BIDDING PROCESS

Documents from October, November, and December 2006 demonstrate that the District was impartial and ran a fair and open competitive bidding process that was free from conflicts of interest. Contracts were ultimately awarded by the District’s Board of Education following a public RFP process and the recommendation of the District’s administrative staff, including then Assistant Superintendent Dr. Raymond Blanch.

On October 5, 2006, Mr. Endicott sent a memorandum to Dr. Blanch in which he opined the VoIP would not be eligible for E-rate and suggested purchasing a system for in-house maintenance instead of contracting with *any* provider. He presented a PowerPoint presentation shortly thereafter in which he described how we might send out an RFI for the purchase of a system instead of contracting for VoIP services. If he was committed to a contract with Trillion, surely Mr. Endicott would not have suggested departing from *any* contract altogether. Mr. Endicott’s memorandum is attached hereto as Exhibit 4 at pages 9-10.

On November 15, 2006, after the District learned that E-rate may be possible for VoIP, Mr. Endicott emailed numerous providers to review the RFPs relating to Form 470. The USAC website provides, “Applicants *may*: Use RFPs or other solicitation methods tailored to specific needs and circumstances in addition to the required Form 470.”²¹ RFPs are not required to create a competitive bidding process. Yet, the District used detailed RFPs and Mr. Endicott emailed numerous providers with a link to those RFPs. Mr. Endicott’s email is included as Exhibit 4 at page 22. The VoIP RFP is included in Exhibit 4 at pages 25-65; and the WAN RFP is included in Exhibit 4 at pages 67-86.

On December 19, 2006, Mr. Endicott emailed all applicants to provide additional specifications and requirements. Exhibit 4 at page 23. The contract could have been awarded six days earlier, on December 13, 2006. Yet, Mr. Endicott continued to search for the best possible options. The December 19, 2006 addenda to the RFPs are included in Exhibit 4 at pages 88-91. The District did not select Trillion until January 19, 2006, which was over one month after the first allowable contract date.

In short, the District went above and beyond what was required of it in the competitive bidding process.

As further evidence of the competitive bidding process, another Form 470 (#266780000594238) that was filed only one day after the 470 at issue in this response requested many services that are provided by Trillion. Yet, the contracts relating to this contemporaneous

²⁰ *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools, Albert Lea, Minnesota, et al.*, File No. SLD-517274, *et al.*, CC Docket No. 02-6, para. 8 (*internal citation omitted*).

²¹ Ex. 6 at p. 1.

470 were awarded to entirely different providers including Qwest Corporation (SPIN #143005231), Level 3 Communications, LLC (SPIN #143021460), Affinity Telecom, Inc. dba C-Com (SPIN #143024740), Nextel West Corp (SPIN #143000893), Infinite Campus Inc. (SPIN #143029587), and Customer Acquisition, LLC (SPIN #143023207).

REQUEST FOR WAIVER

As discussed above, the District believes that it violated neither the spirit nor the text of any applicable rules in conducting its competitive bidding processes. To the extent, however, that the Commission would conclude that there is any question about that, the District respectfully requests, alternatively, that the Commission waive its rules and reverse the denials and rescissions accordingly. The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In deciding whether to waive a rule, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³

It would be entirely inequitable to rescind or deny funding due to two gifts that occurred more than four years ago, were in an amount only \$5 more than the Commission's new regulations permit, and were below even the new annual limits. It would likewise be inequitable to rescind or deny funding because a District employee attended workshops and engaged in relationship building activities in the context of an existing business relationship with the provider, which also occurred over four years ago.

The inequity is especially stark when one considers the total lack of any guidance whatsoever that would have implied that *de minimus* gifts meeting state law standards were prohibited. In fact, USAC specifically contemplated that gifts could be given on its website. The advice regarding gifts to "know and follow your state and local rules" was not ambiguous, and the District faithfully complied with all state and local rules regarding such gifts.

Furthermore, there is no evidence, and in fact there has been even no allegation, of waste, fraud, abuse, or misuse of E-rate funds by the District. The District has used the E-rate program funds to increase its schools' access to advanced telecommunications in order to better educate its students. At all times, the District endeavored to adhere to the core program requirements.

For these reasons, if the Commission does not see fit to reverse USAC's rescissions and denials on the grounds that it misapplied the rules then in existence, we respectfully request that the Commission grant the District a waiver of those rules.

²² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA., et al.*, File Nos. SLD-487170, CC Docket No. 02-06, FCC 06-54 para. 6 (internal citations omitted).

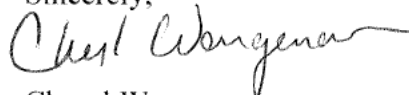
CONCLUSION

Out of the four providers that submitted bids, taking into account the discounted E-rate services that Trillion could provide, Trillion was the lowest bidder. In selecting a provider, "price should be the primary factor considered."²⁴ The District selected Trillion because it offered the lowest price and the best value. If the District were prohibited from selecting Trillion because it had an existing contractual relationship with it, USAC would have been required to subsidize greater costs and the entire purpose of the competitive bidding process would have been subverted. The new regulations relating to gifts do not apply retroactively, but, even if they did, the District would have largely complied with the letter and spirit of the new regime.

Nowhere does USAC or the FCC require that a provider with whom there was an existing contractual relationship be excluded from a competitive bidding process. Such a policy would be completely inconsistent with the goals of a competitive bidding process. If USAC's denials of the FRNs relating to Trillion are not reversed, the District will be forced to initiate a new competitive bidding process for fiscal year 2011 in which Trillion is excluded. Excluding Trillion will likely cost USAC and the District more money because it may be relegated to choosing a provider with higher prices than those offered in its current, long-term contract with Trillion.

Accordingly, the District respectfully requests that the Commission reverse USAC's denials and rescissions.

Sincerely,



Cheryl Wangeman
Assistant Superintendent of Operations
Lewis-Palmer School District 38
146 Jefferson Street
P.O. Box 40
Monument, CO 80132
Telephone: (719) 488-4705
Fax: (719) 488-4704
CWangeman@lewispalmer.org

Richard E. Bump
Caplan and Earnest LLC
1800 Broadway, Suite 200
Boulder, CO 80302-5289
Telephone: (303) 443-8010
Fax: (303) 440-3967
rbump@celaw.com

²⁴ 47 C.F.R. § 54.511(a).

Exhibits:

1. Funding Commitment Decision Letters
2. Notification of Commitment Adjustment Letters
3. Letter, dated June 4, 2010, from Pina Portanova, USAC
4. Lewis Palmer School District 38's response to Ms. Portanova, dated July 9, 2010
5. USAC "Issues in Competitive Bidding," PowerPoint Presentation
6. USAC's webpage Information, Step 3: "Open a Competitive Bidding Process"